

File

September 5, 1985

Dana Abrahamsen, Esquire
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room #313
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580


Re: Informal Interpretation of 16 C.F.R. § 802.50(b)(2)

Dear Mr. Abrahamsen:

During our recent telephone conversation, we discussed the interpretation of the appropriate method for calculating dollar volume of sales in or into the United States by a foreign issuer. During our telephone conversation you advised me that you concur with my analysis that the transaction described below is not reportable because of the applicability of the § 802.50(b)(2) exemption. My client intends to consummate the transaction described below without reporting based on your informal advice.

FACTS

Company A is a United States manufacturing corporation with sales and assets in excess of \$1 billion. It has a wholly-owned foreign subsidiary ("F. Sub."). F. Sub. and an unrelated foreign corporation ("F. Corp.") several years ago formed a foreign corporate joint venture ("FJV") which is 50% owned by F. Corp and F. Sub. In order to finance the joint venture's manufacturing facility, F. Sub. and F. Corp. entered into product purchase guarantees with the lenders. Pursuant to the terms of these guarantees F. Sub. and F. Corp. are required to guarantee that each pound of production from FJV will return to FJV cost plus 3 cents. FJV is designated as the exclusive seller of FJV's products throughout the world and FJV markets the product independent of F. Corp. and F. Sub.


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September 6, 1985
Page Two



Pursuant to the terms of the product purchase guarantee, as a technical legal matter, F. Corp. and F. Sub. become owners of each pound of production of FJV on a fifty/fifty basis. Then as a non-disclosed agent, FJV markets the product. If the amount FJV receives for the product is less than cost plus 3 cents per pound, F. Corp. and F. Sub, on a fifty/fifty basis, pay FJV the difference.

In its most recent fiscal year, FJV sold to United States customers a number of pounds of product which resulted in sales of approximately \$22 million. The \$22 million, however, was not sufficient to return full cost plus 3 cents per pound to FJV. Therefore, F. Corp. and F. Sub. were required to pay to FJV approximately \$3 million each or a total of \$6 million in addition to the \$22 million of sales receipts which were earned from sales in or into the United States.

B Corp. a domestic manufacturing company with sales of more than \$1 billion intends to purchase F. Sub. which holds a 50% interest in FJV. Immediately prior to, or at the time of the acquisition, F. Sub. will purchase the other 50% interest in FJV from F. Corp. Because F. Corp. and entities controlled by F. Corp. (FJV) did not have sales in or into the United States of more than \$25 million (\$22 not \$28) the transaction is not reportable.

I believe the above accurately reflects the facts as we discussed them in our telephone conversation. If you disagree, please contact me immediately.

Very truly yours,

*Reviewed 3/10/87 - Okay
Jat*